

1 ☐ EXPEDITE

2 ☒ No Hearing is Set

3 The Honorable Judge Thomas McPhee

**FILED**

NOV 15 2011

SUPERIOR COURT  
BETTY J. GOULD  
THURSTON COUNTY CLERK

7  
8 **STATE OF WASHINGTON**  
**THURSTON COUNTY SUPERIOR COURT**

9 MIKE KREIDLER,  
INSURANCE COMMISSIONER,

10  
11 Petitioner,

12 v.

13 CASCADE NATIONAL INSURANCE  
COMPANY,

14  
15 Respondent.

NO. 04-2-02427-4

**TWENTY-THIRD**  
**REPORT OF RECEIVER**

16 Mike Kreidler, Insurance Commissioner of the State of Washington and Statutory  
17 Receiver of Cascade National Insurance Company in Liquidation ("Cascade" or "CNIC"),  
18 James T. Odiome, Deputy Insurance Commissioner and Court-appointed Receiver of Cascade,  
19 and Marshall McGinnis, court-appointed Deputy Receiver of Cascade (collectively the  
20 "Receiver"), by and through their attorneys, Robert M. McKenna, Attorney General, and  
21 Heather L. Polz, Assistant Attorney General, hereby submit the Twenty-Third Report of  
22 Receiver pursuant to RCW 48.31.040(5), and state as follows:

23 1. *Order of Liquidation.* On November 4, 2005, this Court declared Cascade  
24 insolvent and entered an Order of Liquidation and Approval of Plan of Liquidation ("Order of  
25 Liquidation" or "Order") pursuant to Chapters 48.31 and 48.99 RCW.  
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1           2.     *Accounting to the Court.* In accordance with the Court's July 22, 2011 Order  
2 Granting Motion For Semiannual Reporting By The Receiver, the Receiver shall file a report  
3 with the Court twice per year, on or about May 15<sup>th</sup> and November 15<sup>th</sup>.

4           3.     *Financial Report.* Attached hereto as Exhibits A, B, and C are Cascade's  
5 October 31, 2011 Balance Sheet, and Statement of Receipts and Disbursements, and its  
6 Supplemental Claims Information as of September 30, 2011. The financial figures are derived  
7 from calculations made in accordance with the Receiver's Handbook for Insurance Company  
8 Insolvencies published by the National Association of Insurance Commissioners ("NAIC").

9           The enclosed financial statements have been prepared from available information.  
10 Certain assets and liabilities are estimates. Assets with uncertain realizable value have not  
11 been included. Additional assets resulting from legal and/or collection efforts may be recorded  
12 in the future when realized. The review of incoming claims is an ongoing process. The  
13 estate's largest creditors are various Insurance Guaranty Associations. Current known Class 2  
14 (Loss Claims) liabilities of \$31,099,041 are calculated based upon the Receiver's best estimate  
15 of outstanding loss and loss adjustment expense reserves for automobile claims as of the  
16 review completed for closed files returned to Cascade as of the end of 2008, and estimated  
17 Workers Compensation claims based on the most current actuarial study performed using  
18 claims data as of December 31, 2009. Since the Guaranty Associations are now handling the  
19 automobile claims, the usual and traditional actuarial methodology for estimating loss reserves  
20 is not applicable. The Receiver completed a detailed review of each individual automobile  
21 claim closed and returned to Cascade by all Guaranty Associations as of the end of 2008.  
22 Based upon that review of closed claims and known outstanding claims, the Receiver has  
23 adjusted Class 2 automobile claims liabilities to reflect the Receiver's best estimate of those  
24 liabilities going forward. Note that this adjustment includes a corresponding reduction in  
25 applicable reinsurance recoverable, a Balance Sheet asset. In this review process, the Receiver  
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1 also re-categorized estimated Insurance Guaranty Association unallocated loss adjustment  
2 expenses as Class 1 Liabilities.

3 As of October 31, 2011, known assets totaled \$20,950,177 with 58% in cash and short-  
4 term investments. The estate's cash and short-term investment decreased significantly as a  
5 result of early access distributions to the insurance guaranty associations totaling \$6 million.  
6 All of Cascade's Alaska automobile claims have been closed. In accordance with Alaska  
7 statutes, Cascade's restricted deposit held by the state was transferred to the Alaska Guaranty  
8 Association, increasing the amount advanced to it by \$312,749. The Receiver has requested  
9 the finalization of the association's previously submitted proof of claim against the estate and  
10 is awaiting their response. Known liabilities totaled \$36,104,285 resulting in a deficiency of  
11 assets over liabilities of \$15,154,108. For the period ending October 31, 2011, exclusive of the  
12 early access distribution of \$6 million, cash disbursements exceeded cash receipts by  
13 \$1,164,157. Cash receipts were primarily from asset recovery efforts, collection of loss  
14 recoverable from reinsurers, refund of state premium taxes and recovery of salvage and  
15 subrogation on paid loss claims. Operating expenses continue to be well within amounts  
16 budgeted by the Receiver. Based on electronic claims data received from the guaranty  
17 associations as of September 30, 2011, a total of \$15,568,451 of loss claims and allocated loss  
18 adjustment expenses have been paid. See the Supplemental Claims Information, Exhibit C for  
19 details.

20 4. *Proof of Claims.* In accordance with paragraph 3.5 of the Plan of Liquidation,  
21 the Receiver issued Proof of Claim forms to all policyholders and other potential claimants.  
22 All claimants had until March 4, 2006, to file a timely Proof of Claim form. Claims continue  
23 to be reviewed. Some have been denied. The Receiver is seeking additional information from  
24 some claimants. The Receiver anticipates that there may be some claims that will be rejected  
25 in whole or part, which will be disputed by the claimant and will require a hearing for ultimate  
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1 resolution. The Receiver denied Mainstay Business Solutions' Proof of Claim No. 1284, and  
2 on July 22, 2011, the Court entered an Order confirming the Receiver's Final Determination  
3 Denying the Claim of Mainstay Business Solutions.

4 5. *Operations.* The Receiver received approval by the Court to cease all  
5 operations of its subsidiary, MBR Corporation DBA Allied Pacific Adjusting Group  
6 ("Allied"), effective April 14, 2006. All Allied assets were disposed of or sold, with all funds  
7 received from the sale maintained in a separate account. The funds were subsequently  
8 disbursed and documents to dissolve the corporation were filed with all appropriate  
9 jurisdictions. All activities required to cease all operations of Allied have now been  
10 completed.

11 6. *Marshalling Assets.* The Receiver completed a global reconciliation of  
12 accounts current for its former general agents, Kenneth I. Tobey, Inc. and the Statewide  
13 General Insurance Agency, and has billed them for closing amounts totaling over \$1 million.  
14 Both general agents dispute the global reconciliations presented by the Receiver.

15 The Office of the Insurance Commissioner ("OIC") initiated a license revocation action  
16 against K.I. Tobey for failure to pay and mishandling of trust funds, and K.I. Tobey has  
17 voluntarily accepted revocation. Settlement negotiations between the OIC and K.I. Tobey  
18 failed, and K.I. Tobey filed for bankruptcy in Atlanta, Georgia. A trustee was subsequently  
19 appointed by the bankruptcy court. The Receiver is pursuing the claim in the bankruptcy court,  
20 but the likelihood of recovery is unknown. On October 23, 2009, the case was converted from  
21 Chapter 11 to Chapter 7.

22 In 2007, the Receiver initiated an adversarial claim for wrongfully withheld premiums  
23 against Statewide General Insurance Agency and Marcel Matar, personal guarantor of amounts  
24 owed. Statewide was served, and its attorneys filed notices of appearance. In 2008, an Answer  
25 was filed claiming lack of personal service against Mr. Matar. The Receiver's counsel  
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1 requested information regarding the financial status of Mr. Matar and his business in order to  
2 determine whether resources exist to repay Cascade. The information provided was limited  
3 and insufficient to determine the financial status of Mr. Matar. Mr. Matar was personally  
4 served in Pasadena, California on January 28, 2010. The original attorneys have since  
5 withdrawn, and another counsel for Statewide and Mr. Matar filed a Notice of Appearance in  
6 May 2010. The parties are currently engaged in the discovery process.

7 The Receiver is also pursuing amounts owed by Mainstay, one of Cascade's workers'  
8 compensation accounts in California, which include payment for premium, paid claims, and  
9 reserves. Cascade has requested payment and information required under the policy with  
10 Mainstay for Cascade to conduct a premium audit. Mainstay has not provided payment, but an  
11 agreement regarding the audit premiums due has been reached. Cascade made a formal  
12 demand for payment from Mainstay on November 19, 2009. Cascade is attempting to  
13 communicate about these issues with Mainstay.

14 The Receiver, through counsel, continues to pursue various legal avenues that could  
15 result in recovery of assets to the receivership estate. The Receiver filed a Complaint for  
16 Damages in King County Superior Court against several defendants, including Danny Pixler,  
17 Anthony Huff, American Staff Resources of California, Inc., Certified Services, Inc., and  
18 Midwest Merger Management, LLC. The case was removed to U.S. District Court for the  
19 Western District of Washington, No. C06-697 RSL. On May 21, 2010 the jury returned a  
20 \$19,310,744 verdict in favor of the Receiver on claims of civil conspiracy, criminal  
21 profiteering, unfair trade practices/consumer protection, misrepresentation and fraud. On  
22 January 3, 2011, the Court awarded \$2,031,925.75 in attorney's fees and \$494,496.61 in  
23 litigation expenses under the Consumer Protection Act and Criminal Profiteering Act.  
24 Defendants Anthony Huff, Sheri Huff, and Midwest Merger Management, LLC filed an appeal  
25 to the U.S. Court of Appeals for the Ninth Circuit. Proceedings are ongoing.  
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1 By way of additional background, the SEC initiated criminal proceedings against  
2 defendant Danny Pixler in Florida. Defendant Pixler has entered into a plea agreement in those  
3 proceedings, pleading guilty to conspiracy to commit wire fraud, and is now incarcerated on a  
4 five year sentence. The SEC initiated civil proceedings against Anthony Huff and a bench trial  
5 was held beginning February 16, 2010. On September 30, 2010, the judge entered an order in  
6 favor of the SEC, finding Huff violated federal securities laws and ordering him to disgorge  
7 over \$10 million in ill-gotten gains.

8 After filing suit against the Defendants, the Receiver learned that Certified HR  
9 Services, a subsidiary of Defendant Certified Services, Inc. ("Certified Services"), had entered  
10 into bankruptcy proceeding in the U.S. District Court, Southern District of Florida, Case No.  
11 05-22912-BKC-RBR. The Receiver ultimately entered into an agreement with the bankruptcy  
12 trustee and obtained a Court order establishing that none of Cascade's claims against the  
13 Defendants in the Washington litigation were affected by the Florida bankruptcy action, and  
14 preserving the possibility of recovery against the consolidated Certified HR Services/Certified  
15 Services bankruptcy estate. The Receiver subsequently filed a \$2 million claim against the  
16 bankruptcy estate. A \$100,000 interim distribution was received in April 2011, but it is  
17 uncertain when or whether there will be further payment on this claim.

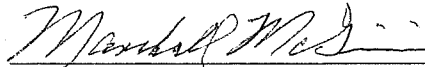
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1 The Receiver filed a civil action in King County Superior Court, No. 06-2-34413-8-  
2 SEA, to recover damages for officer/director actions that harmed Cascade. A favorable  
3 settlement has been reached and the action has been dismissed.

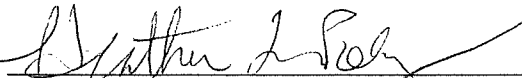
4 RESPECTFULLY SUBMITTED this 14 day of November, 2011

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7 MARSHALL MCGINNIS  
8 *Deputy Receiver*

9 Presented by:

10 ROBERT M. MCKENNA  
11 Attorney General

12 

13 HEATHER L. POLZ, WSBA #30502  
14 Assistant Attorney General  
15 *Attorneys for the Insurance Commissioner*  
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**Cascade National Insurance Company in Liquidation**  
**Balance Sheet**  
**As of October 31, 2011**

		<u>10/31/2011</u>	
<b>ASSETS</b>			
Operating cash		38,579	
ST investments		<u>12,058,652</u>	
Cash & ST Investments	(1)		12,097,231
Advances to Guaranty Associations		6,312,749	
Reinsurance recoverable (net)	(2)	<u>2,524,668</u>	
Rental deposit		15,529	
Total Other Assets			8,852,946
<b>TOTAL ASSETS</b>	(3)		<u><u>20,950,177</u></u>
<b>LIABILITIES</b>			
Secured Claims		-	
Class 1	(4)	4,795,043	
Class 2	(5)	31,099,041	
Class 3		-	
Class 4		-	
Class 5		55,284	
Class 6		138,863	
Class 7		16,054	
Class 8		-	
Class 9		-	
<b>TOTAL LIABILITIES</b>			36,104,285
<b>Excess (Deficiency) of Assets Over Liabilities</b>			(15,154,108)
<b>TOTAL</b>			<u><u>20,950,177</u></u>

**Note:** The information contained in this report is prepared by the receiver from information available to, known or estimated by the receiver as of the date of the report. The receiver makes no warranty as to the accuracy of the information or of the opinions or evaluations contained in this report and expressly disclaims any liability arising from the statements of fact, evaluation or opinion contained in the report.

- (1) Cash & ST investments include \$133,752 of restricted state deposits.
- (2) Reinsurance recoverable includes \$2.5 million of ceded loss, loss adjustment expenses and related incurred but not reported losses estimated for Company's automobile business.
- (3) Assets reported in this statement do not include all possible recoveries that may result from various legal and/or collection efforts.
- (4) The Class 1 Liability represents the remainder of the six-year operating expense budget for the receivership and estimated unallocated loss adjustment expenses of the Insurance Guaranty Associations.
- (5) Automobile loss reserves are the best estimates based on detailed review of each individual automobile claim closed and returned to the estate by all guaranty associations as of the end of 2008. These estimates will continue to be updated as more claim files are closed and returned to the estate. For workers' compensation policies, the receivership, with the help of an independent consulting actuary, updated its Class 2 workers' compensation liabilities using paid losses and loss reserves data from the California Guaranty Association as of 12/31/09.



**Cascade National Insurance Company in Liquidation**  
**Statement of Receipts and Disbursements**  
**Period Ending October 31, 2011**

	12 Months Ending 10/31/2011	Since Date of Liquidation Order
<b>RECEIPTS</b>		
Reinsurance recoveries	70,829	2,810,532
Agents balances	-	142,718
Salvage & subrogation recoveries	2,022	300,915
Recovery of taxes previously paid	-	283,221
Asset Recovery	-	1,500,000
Other receipts	100,215	365,672
Receipts Before Investment Activities	<u>173,066</u>	<u>5,403,057</u>
Investment receipts	1,551	1,498,083
Proceeds from sales & maturity	-	915,000
Receipts from Investment Activities	<u>1,551</u>	<u>2,413,083</u>
<b>TOTAL CASH RECEIPTS</b>	<u><b>174,617</b></u>	<u><b>7,816,139</b></u>
<b>DISBURSEMENTS &amp; DISTRIBUTIONS</b>		
Claims processing expenses	-	506,948
Legal fees	184,110	2,997,806
Consulting fees	78,805	552,521
Salaries	218,329	2,320,035
Employee benefits	8,000	98,219
Payroll & other taxes	10,362	133,757
Rent & related expenses	37,296	238,895
Equipment expenses	5,733	125,219
Office expenses	13,261	147,502
Other disbursements	9,661	70,633
Disbursements	<u>565,557</u>	<u>7,191,536</u>
Early Access Distributions	-	6,000,000
Disbursements Before Investment Activities	<u>565,557</u>	<u>13,191,536</u>
Investment Expenses	3,857	19,787
Purchase of Investments	1,551	1,768,973
Disbursements for Investment Activities	<u>5,408</u>	<u>1,788,761</u>
<b>TOTAL CASH DISBURSEMENTS &amp; DISTRIBUTIONS</b>	<u><b>570,964</b></u>	<u><b>14,980,297</b></u>
<b>Net Cash Receipts over/(under) Disbursements</b>	<u><b>(396,348)</b></u>	<u><b>(7,164,157)</b></u>
Cash at beginning of period	83,909	773,413
Net Cash Receipts over/(under) Disbursements	(396,348)	(7,164,157)
Cash transferred from/(to) ST investment	351,018	6,429,324
Cash at end of period	<u><u>38,579</u></u>	<u><u>38,579</u></u>

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**Cascade National Insurance Company in Liquidation**  
**Supplemental Claims Information**  
**Claims and Adjusting Expenses Paid by Insurance Guaranty Funds**  
**As of September 30, 2011**

	Auto	Workers Compensation	Total
Alaska	754,382	-	754,382
California	878,360	10,035,764	10,914,125
Oregon	1,010,780	-	1,010,780
Washington	2,889,164	-	2,889,164
	<u>5,532,687</u>	<u>10,035,764</u>	<u>15,568,451</u>

Notes:

- The above amounts do not include reserves established by the insurance guaranty associations for outstanding claims nor the estate's residual liabilities on these claims.

**Cascade National Insurance Company in Liquidation**  
**Supplemental Claims Information**  
**Claim Counts by Loss Event**  
**As of September 30, 2011**

	<b>Auto (1)</b>		<b>Workers Compensation</b>		<b>Total</b>	
	Transferred to IGF	Closed by IGF	Transferred to IGF	Closed by IGF	Transferred to IGF	Closed by IGF
Alaska	6	6	-	-	6	6
California	187	186	366	284	553	470
Oregon	66	66	-	-	66	66
Washington	178	164	-	-	178	164
	<u>437</u>	<u>422</u>	<u>366</u>	<u>284</u>	<u>803</u>	<u>706</u>

**Note:**

- (1) A substantial number of closed auto claims are claims closed by the insurance guaranty associations without loss payment. These claims may have been settled by the claimants' own insurance carrier. As a result, these insurance carriers may have recovery rights against the estate of Cascade.

